

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

**INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
UNION NO. 12, AFL-CIO**

**and**

**Case 28-CB-6173**

**JOHN L. SCOTT, An Individual**

*Mary C. Teer, Esq.*, Las Vegas, NV, for the  
General Counsel

*David Koppelman, Esq.*, House Counsel,  
Pasadena, CA, for the Union

*Jeffrey Boxer, Esq.*, of *Stern and Ford*,  
Los Angeles, CA, for the Union

*Gary G. Branton, Esq.*, of *Albright,  
Stoddard, Warnick & Palmer*, Las Vegas,  
NV, for the Charging Party.

**DECISION**

**Statement of the Case**

**Gerald A. Wacknov, Administrative Law Judge:** Pursuant to notice a hearing in this matter was held before me in Las Vegas, Nevada on March 1, 2005. The charge was filed on September 27, 2004 by John L. Scott, an Individual. On November 30, 2004, the Regional Director for Region 28 of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing alleging violations by International Union of Operating Engineers, Local Union No. 12, AFL-CIO (Respondent or Union) of Section 8(b)(1)(A) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel), counsel for the Respondent, and counsel for the Charging Party.

Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

## **Findings of Fact**

### **I. Jurisdiction**

At all material times, the Nevada Contractors Association, herein called NCA, has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Respondent. The employer-members of the NCA collectively in conducting their business operations described above, annually purchase and receive at their facilities located in the State of Nevada, goods valued in excess of \$50,000 directly from points outside the State of Nevada. It is admitted and I find that the NCA and its collective employer-members have each been employers engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

### **II. The Labor Organization Involved**

It is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### **III. Alleged Unfair Labor Practices**

#### **A. Issues**

The principal issue in this proceeding is whether the Respondent has violated Section 8(b)(1)(A) of the Act by failing to timely provide the charging party with certain requested hiring hall job referral information.

#### **B. Facts**

The Union operates an exclusive hiring hall for the purpose of dispatching workers for employment on jobs covered by collective bargaining agreements between the Union and various multi-employer associations or signatory contractors.

The Charging Party, John L. Scott, has been a member of the Union for many years, during which he has utilized the Union's hiring hall to obtain employment. Sometime during 2004, because he was not receiving referrals to jobs even though he was near the top of the hiring hall out-of-work list, he believed he was being skipped or overlooked by hiring hall personnel. To ascertain whether hiring hall personnel were treating him fairly in accordance with established hiring hall practices, he requested certain information. Thus, by letter dated May 31, 2004,<sup>1</sup> he directed a letter to the Union as follows:

I hereby request, pursuant to *Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO (Kiewit Pacific Co.)* and *Cynthia Albert, 324 NLRB No. 4*, that all pertinent information regarding the dispatching of jobs

<sup>1</sup> Although this request is dated May 31, 2004, it appears that the Union did not receive it until on or about July 22, 2004.

to Union Members of Local 12, Southern Nevada District, through its hiring hall, located at 360 Shadow Lane, Las Vegas, Nevada, and any and all other means of dispatching be provided to me at the above listed address. This information is to include but not be limited to:

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1) The names of all persons who, for the past two (2) years have asked to be referred to jobs by Local 12, Southern Nevada District, or have asked that their names be placed on the out-of-work list for job referrals;

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2) The date or dates of each request;

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3) The date or dates of each subsequent referral of such person to a job, including the name and the location of such person on the out-of-work list, the name of the employer to whom referred, piece of equipment dispatched for, and identification of the jobsite to which referred; and

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4) The date or dates of each hire and of any subsequent layoff or discharge, including the name of the person hired and/or laid off, the name of the employer and the identification of the jobsite. <sup>2</sup>

Please provide this information to me no later than July 1, 2004. In the event you choose not to provide me this information, please sign a copy of this letter, and return to me.

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The Union did not reply to this letter, and on August 31, 2004, Scott's attorney wrote a letter to the Union stating that Scott had a good faith belief that he had been discriminated against by the Union "because of charges he filed against you several years ago and because of a charge he filed with the National Labor Relations Board on May 5, 2004, in Case No. 28-CB-6114." The letter goes on to demand production of the records requested by Scott, and states that Scott will seek all legal remedies available to obtain such records.

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By letter dated September 8, 2004, the Union's attorney replied to the August 31, 2004 letter from Scott's attorney, inter alia, as follows:

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Local 12 does not believe that Mr. Scott has a good faith basis for alleging that he has been discriminated against by Local 12 in regards to job referrals. Over the past several years, Mr. Scott has filed numerous unfair labor practice charges against Local 12, alleging such discrimination. In each instance, Local 12 has provided the relevant records to the National Labor Relations Board, and in each case the charge has been found to be meritless. See e.g., NLRB Case Nos. 28-CB-6114, 28-CB-5096, 28-CB-5008, 28-CB-4942, 28-CB-4944, 28-CB-4882. Local 12 concludes that this latest request is not made in good faith, but rather is made for the purpose of harassment and annoyance of Local 12.

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<sup>2</sup> This request for information is virtually identical to the language contained in the request for information set forth in the aforementioned Board decision.

Additionally, the request seeks documents pertaining to numerous individuals and signatory employers, each of which has privacy rights which would be invaded by these requests. The requested documents also go far beyond anything pertaining to Mr. Scott's individual circumstances and the requests are therefore overbroad in the extreme.

The charge referred to in both of the aforementioned letters, Case 28-CB-6114, was filed by Scott on May 5, 2004, and was dismissed by the Regional Director for Region 28 on June 18, 2004, as follows:

*Decision to dismiss:* Based on [the investigation of the charge], I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reason:

Your charge alleges that the Union breached its duty of fair representation by failing to refer you from its hiring hall. The evidence adduced failed to support this allegation. In this regard, the evidence reflects that on various occasions the Union attempted to contact you for work referrals. However, your late acknowledgement of these referrals resulted in other workers being referred. There is no evidence that the Union harbors any animus towards you, or that their actions were discriminatorily motivated.

This decision to dismiss was not appealed by Scott.

There are three types of documents utilized by the hiring hall to process referrals: the out-of-work-list showing the priority of the individuals seeking referrals; the personal job history cards listing the work and machinery which each individual is willing or not willing to accept and/or operate, and the date, time, and relevant details of each contact between hiring hall personnel and the individual seeking "dispatchment," regardless of whether the contact is initiated by the hiring hall or the individual seeking dispatchment; and dispatch "Introduction" forms containing the name of the employer, the name of the individual being dispatched, the type of machinery the individual is to operate, the date and time the order was received, the individual's reporting date and time, and whether the individual was dispatched pursuant to the employer's specific request for that individual, or was dispatched by the hiring hall by "open order," that is, in order of seniority on the hiring-hall-list.

Scott's work history cards, introduced into evidence, show that Scott was willing to operate only a limited number of machines, was not willing to work nights, and was not willing to accept out of town referrals, test site referrals, hazardous material referrals, or rock, sand and gravel referrals. Scott's work history cards also show that Scott was called on various occasions by hiring hall dispatchers at the home phone and cell phone numbers listed on his work history card for the purpose of notifying him of available referrals.<sup>3</sup> On these occasions, the dispatcher either left a message on his answering machine and Scott did not call back in a timely fashion, or Scott answered and said he did not want to accept certain work, or Scott initially answered his cell phone and stated he was unable to hear the dispatcher, but then did not answer when the dispatcher called back. Scott testified that as his cell phone does not have a feature that records the caller's number, he was unable to know when any particular call was from the hiring hall.

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<sup>3</sup> Scott's work history cards show that these calls from a hiring hall dispatcher to Scott were made on March 14, April 1, April 23, April 26, May 5, September 13, September 14, September 17, and October 10, 2004.

### C. Analysis and Conclusions

The General Counsel maintains that Scott, as an individual dependent upon the Union's exclusive hiring hall for his livelihood, is entitled as a matter of right to relevant hiring hall information in order to ascertain that he is being treated fairly by hiring hall dispatchers, and that no discriminatory or unlawful motivation on the part of the Union is required as a predicate for such an information request. I agree.

Thus, in *Operating Engineers Local 513, 308 NLRB 1300, 1302-3 (1992)*, the Board adopted the decision of the administrative law judge who analyzed this issue and concluded that "[I]n the absence of some good reason advanced by Respondent for withholding the information, it should be made available without the necessity of laying a foundation." I find that Scott is entitled to the information simply because he is a hiring hall registrant, so long as the information request is made in good faith.

The Union declined to furnish the requested information on the basis that Scott's request was not made in good faith but rather was "made for the purpose of harassment and annoyance of Local 12." The record evidence shows that Scott had filed many charges against the Union, and that the Regional Director for Region 28 had dismissed his May 5, 2004 charge in Case 28-CB-6114, alleging that the Union breached its duty of fair representation by failing to refer Scott from its hiring hall. Nevertheless, it appears that Scott, despite being high on the out-of-work list, received no calls from hiring hall dispatchers between May 5, 2004 and September 13, 2004, a period of four months. Under these circumstances, it seems reasonable to assume that Scott's July 22, 2004 information request was made because he either believed he was being skipped over in retaliation for the charge he had filed against the Union, or because he wanted the Union to be cognizant of the fact that he intended to closely monitor the situation so that he would not be skipped over. Accordingly, I conclude the facts are insufficient to show, as asserted by the Union, that Scott's information request was merely for the purpose of harassing or annoying the Union. I therefore find that the Union has violated Section 8(b)(1)(A) of the Act by failing to timely provide Scott with the requested information.

At the hearing the parties disagreed regarding the hiring hall information to which Scott should be entitled. Since the filing of the instant charge the Union has furnished Scott with certain hiring hall lists showing the status of all hiring hall registrants on the lists, Scott's work history cards for several months, and copies of dispatch "Introduction" forms showing dispatchments to any particular job that Scott, according to his work history card, would have accepted had he been called by the hiring hall dispatchers. Further, at the hearing, the Union's attorney stated that the Union had no objection to furnishing Scott with similar information for up to six months prior to the filing of the charge.

The General Counsel, however, maintains that the Union should also furnish Scott with *all* copies of dispatch "Introduction" forms for the pertinent time period, even though Scott has disqualified himself for such jobs on his work history card and therefore has declined in advance to accept such jobs. In this regard, the rationale of the General Counsel seems to be that access to all of these dispatches would enable Scott to ascertain the number and frequency of dispatches for particular pieces of equipment so that perhaps he could modify his work history card to include such pieces of equipment, thus giving him more work opportunities. I do not agree. It is perfectly obvious that the more limitations a hiring hall registrant places upon his job opportunities, the fewer referrals he will receive and the longer he will have to wait for such referrals; and the converse is also, of course, true. To require the Union to provide Scott with the numerous documents suggested by the General Counsel would seem, under the

circumstances, to place an undue and unnecessary burden upon the Union, and would not be helpful to Scott in his quest to insure that he was being treated fairly. Thus, Scott's testimony shows that he has voluntarily limited his job opportunities for reasons personal to himself. Indeed, when asked why his personal work history cards note that he is unwilling to operate certain types of equipment, Scot testified, "They're too hard on your health."

At the outset of this proceeding Scott maintained that he should be furnished his own work history cards as well as the work history cards of *all* hiring hall registrants. The Union objected on the basis that this was not included within the allegations of the complaint. The General Counsel agreed. The General Counsel was then given the opportunity to amend the complaint in this regard, and specifically declined to do so. In his brief, Scott maintains that the nature and importance of his access to the work history cards of *all* hiring hall registrants has been fully litigated and that therefore the issue, having been litigated, should be resolved in this proceeding. I do not agree that the matter has been fully litigated, as the Union, having been put on notice that production of work history cards for hiring hall registrants other than Scott was not an issue in this proceeding, may have refrained from proffering further evidence or making further arguments.<sup>4</sup> Moreover, even assuming *arguendo* that the matter was fully litigated, the General Counsel has specifically determined that neither Scott's information request nor the complaint allegations encompass the work history cards of hiring hall registrants other than Scott.

It appears that the hiring hall information which I have found should be furnished to Scott is sufficient to permit him to determine whether he has been skipped over in the hiring hall process. Thus, from the hiring hall lists, Scott will be able to ascertain his ranking on the list during any pertinent time; from the dispatch "Information" forms Scott will be able to ascertain who was dispatched to any job for which Scott was registered, when that individual was dispatched, and whether or not the individual was specifically requested by the employer (in which case established hiring hall procedure provides that that individual should be dispatched even if he or she is lower than Scott on the hiring hall list); and from his own personal history cards, Scott will be able to ascertain whether the cards accurately reflect the jobs and equipment Scott was willing to accept and/or operate, and the dates, time, and details of any communications between Scott and hiring hall personnel.

### Conclusions of Law

1. The NCA and its collective employer-members have each been employers engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated and is violating Section 8(b)(1)(A) of the Act as found herein.

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<sup>4</sup> It should be noted that Scott's work history cards, furnished to Scott, are reflective of work history cards in general: they are not computerized or typed but are small ledger cards written or filled out in longhand by the dispatcher who happens to be calling or speaking to Scott at any given time; they are often not readily legible; and they contain messages and abbreviations that are sometimes indecipherable absent testimony of the author of the particular entry on the card. Moreover, given the number of hiring hall registrants, it appears that the work history cards of all registrants would be voluminous.

### The Remedy

Having found that the Respondent has violated and is violating Section 8(b)(1)(A) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

### ORDER<sup>5</sup>

The Respondent, International Union of Operating Engineers, Local Union NO. 12, AFL-CIO, , its officers, agents, successors, and assigns, shall:

#### 1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act by refusing to honor requests for information made by registrants seeking employment under the Union's exclusive hiring hall procedure.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 1. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

(a) Furnish John L. Scott with job referral information consisting of hiring hall lists for six months prior to the filing of the instant charge, dispatch "Introduction" forms pertaining only to those referrals for which Scott was registered in accordance with his work history cards, for six months prior to the filing of the instant charge, and Scott's work history cards for six months prior to the filing of the instant charge.

(b) Within 14 days after service by the Region, post at its office and hiring hall copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in

<sup>5</sup> If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>6</sup> If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

conspicuous places, including all places where notices to members or hiring hall registrants are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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(c) Within 21 days after service by the Regional Office, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated: April 14, 2005

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Gerald A. Wacknov  
Administrative Law Judge

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**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and abide by this notice.

**WE WILL NOT** refuse to make available in a timely fashion relevant job referral information requested by registrants on the hiring hall out-of-work list in order to insure that they are being fairly treated in accordance with established hiring hall practices.

**WE WILL** furnish John L. Scott, a registrant on the out-of work list, with certain information he has requested.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce registrants on the out-of-work list in the exercise of their rights guaranteed by Section 7 of the Act.

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL UNION NO. 12, AFL-CIO**  
(Labor Organization))

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

**This is an official notice and must not be defaced by anyone.**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada; phone 702-388-6416.